IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3137 OF 2006

Terna Shetkari Sahakari
Sakhar Karkhana Ltd & Anr. ....Petitioners.

v/s

1. Indian Oil Corporation
Limited and Ors. ....Respondents.

Mr. S.G. Aney, Sr. Counsel with S.B. Jaisinghani and
B.V. Mahadik for the petitioners.

Mr. G. Joshi i/b RMG Law & Associates for respondent
Nos. 1 to 3.

Mr. N.D.P. Sharma for respondent No.4.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE : 20th June, 2006

P.C.:

1. By this Petition, petitioner - Terna Shetkari Sahakari Sakhar Karkhana Ltd. has challenged the action of the respondent - Corporation in terminating the licence given to the petitioner for sale of petroleum products.

2. The prayers as made by the petitioner read thus:-

> "(a) That this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate

writ, order or direction directing Respondent No.1 to forthwith revoke the order of termination and forthwith resume the supplies of MS/HSD to the Petitioner No.1's retail outlet situate at village Dhoki, Taluka & Dist Osmanabad.

(b) That pending the hearing and final disposal of the present petition, this Honourable Court may be pleased to restrain the Respondents from appointing any other dealer in place and stead of Petitioner No.1.

(c) That pending the hearing and final disposal of the present petition, the Respondent No.1 be ordered and directed to stay the effect and implementation of the Termination letter dated 12-04-2006 (Exhibit "M" hereto) and forthwith resume supplies of MS & HSD to the Petitioner No.1's Pump situate at Village Dhoki, Tal & Dist Osmanabad;

(d) That ad-interim orders be granted in terms of prayers (b) & (c) above;

(e) That the Petitioners be awarded the costs of the present petition;

(f) That the Petitioners be granted such further and other reliefs incidental to the above as this Honourable Court may deem fit in the ends of justice."

3. In effect, what has occurred is termination of contract by Petroleum Corporation which it had entered with the petitioner - Karkhana. It is a clear case of breach of contract. By prayer (a), petitioner prays that the respondent - Corporation be directed to forthwith revoke the order of termination and forthwith resume supplies of diesel etc. The termination of contract has taken place and consequential remedy for the petitioner is to seek a declaration in appropriate Civil Court and consequential relief and alternate remedy of efficacious nature is therefore available. Prayer (b) is for an interlocutory order, restraining the respondent from appointing any other dealer in place of the petitioner. Injunction to this effect by application under Order XXIX Rules 1 & 2 of the Civil Procedure Code can be obtained from Civil Court of competent jurisdiction. Similar is prayer (c).

4. The learned Counsel appearing on behalf of the petitioner submitted that the alternate remedy or its exhaustion is not the absolute prayer for maintaining Writ Petition under Article 226 of the Constitution of India. The reliance was placed on the Judgment of the Supreme Court of India in the case of Sanjana M. Wig (Ms) Vs. Hindustan Petroleum Corpn. Ltd. reported in **(2005) 8 SCC 242**. The alternate remedy under consideration of the Supreme Court in that case was existence of arbitration clause in the agreement, breach of which was committed. In the present case, existence of such clause is not put forward before the Court as an alternate remedy.

5. The judgment then proceeds to state what the settled law in this regard is. Para 15 and 16 of the Judgment in the case of Sanjana (supra) reads as under:-

> "15. In Harbanslal Sahnia, Lahoti, J. (as His Lordship then was), relied upon Whirpool Corpn. V. Registrar of Trade Marks [(1998) 8 SCC 1] observing that in an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its

writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

"16. We may, however, notice that the Bench did not notice the earlier decisions in Titagarh Paper Mills Ltd. [(1975) 2 SCC 436] and Bisra Stone Lime Co. Ltd.[(1976) 2 SCC 167 : AIR 1976 SC 127]. However, there cannot be any doubt whatsoever that the question as to when such a discretionary jurisdiction is to be exercised or refused to be exercised by the High Court has to be determined having regard to the facts and circumstances of each case wherefor, no hard-and-fast rule can be laid down."'

6. It will thus be seen that the writ jurisdiction which essentially is a discretionary jurisdiction can be exercised at least in three contingencies. The first contingency is, where the writ petition seeks

enforcement of any of the fundamental rights. This contingency cannot be said to be present in the instant case. To say that to deal in petroleum products upon licence given by the Petroleum Company has become fundamental right of the petitioner would be stretching the fundamental right's definition beyond its elasticity. The second contingency is where there is failure of principles of natural justice. It is alleged that there is noticeable failure of observing the principles of natural justice in this case. The complaint is breach of contract has been committed. Whether the breach of contract is committed after following principles of natural justice or otherwise would not change the nature of the breach and the remedy for such grievance is, in our opinion, civil court. The third contingency is whether the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is no challenge to any Act or its violence and the orders or proceedings can never be called without jurisdiction as every contracting party can claim it as a matter of right to commit breach of contract. In any event, breach of contract is not, in the instant case, without jurisdiction. The contingencies in which, according to the Supreme Court of India, writ can be entertained do not, therefore, exist in the

present case.

7. Hence, leaving the alternative remedy of civil court open to the petitioner, petition is dismissed.

(V.G.PALSHIKAR, J.)

(V.M. KANADE, J.)